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IN THE

Supreme Court of the United States

October Term, 1945

No. 311.

JAMES H. HICKEY, HOWARD CHARDAVOYNE AND SAMUEL W. CHARDAVOYNE, AS EXECUTORS UNDER THE LAST WILL AND TESTAMENT OF HENRY S. CHARDAVOYNE, DECEASED,

PETITONERS,

vs.

FEDERAL DEPOSIT INSURANCE CORPORATION, AS RECEIVER OF THE FORT GREENE NATIONAL BANK IN NEW YORK

REPLY BRIEF OF PETITIONERS.

JAMES H. HICKEY,
Attorney for Petitioners.

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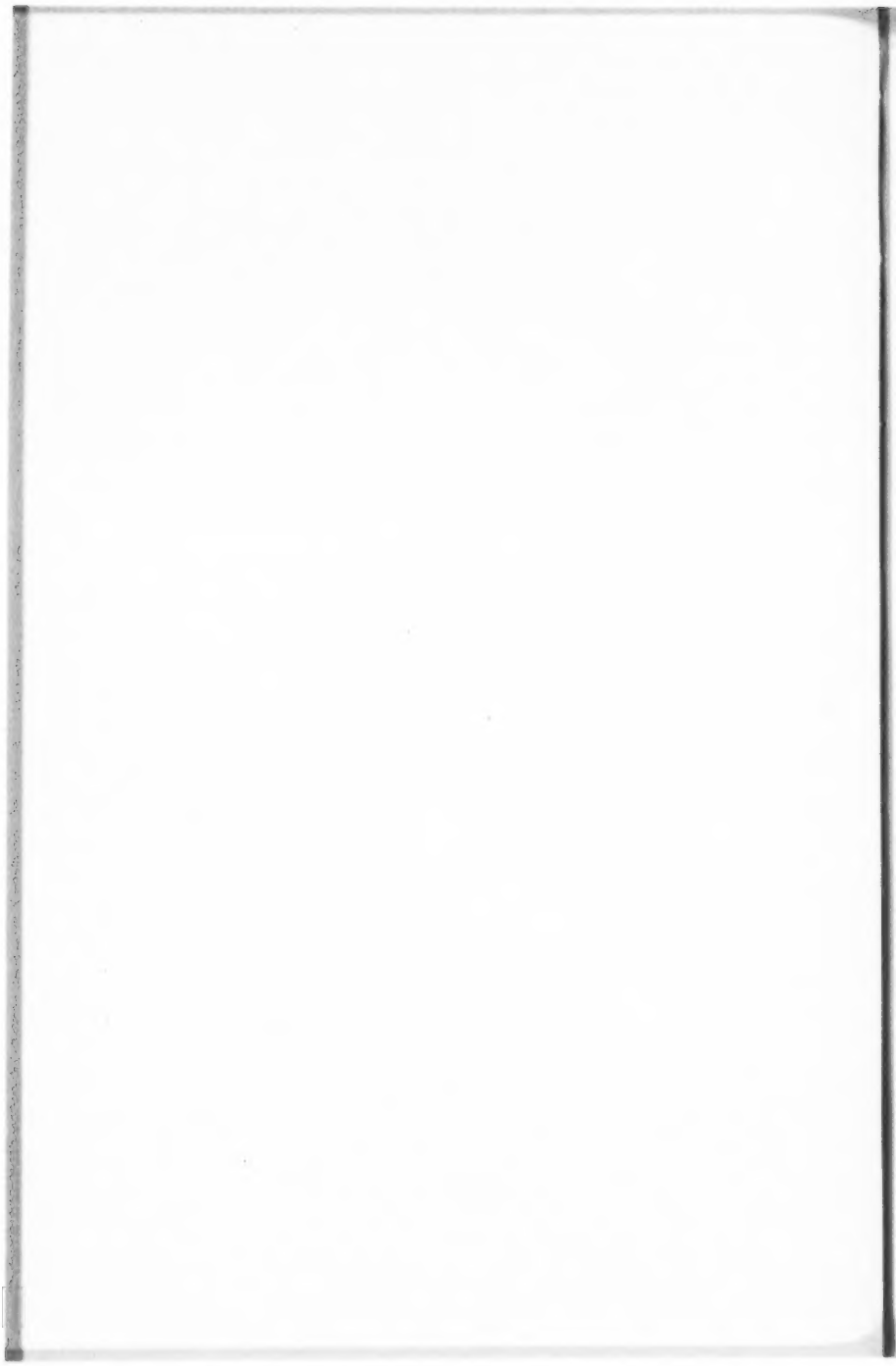

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Respondent's brief brushes aside and does not consider the following important points:

1. The subordination effected by the first reorganization, which after reducing the stock by 30%, provided for preferred stock. The original stock no longer, therefore, was the same stock as existed prior thereto.

2. On the first reorganization $25,000. was transferred to the surplus account. This money was never distributed to the old stockholders (see *Jerome* v. *Cogswell*, 204 U. S. 1 which recognized in a bank reorganization the issue of "new

shares" when shares were surrendered and cancelled, p. 7) but remained in the bank and was shared in by the later stockholders who bought $150,000. of additional stock as provided for by the second reorganization.

3. The actual decrease in the value of the shares of the old stockholders as a result of the second reorganization when their stock was surrendered and cancelled and when finally they held only 350,000 parts of a corporation still capitalized at $500,000. after the sale of 150,000 parts thereof to new stockholders.

4. A substitution of remedies was involved by the statute (12 U. S. C. A., 64 [a]) which provided that there should be no additional liability on stock issued after June 16, 1933 and also provided for insurance of bank deposits. Cumulative remedies are not favored in the law and the well known doctrine *expressio unius exclusio alterius* is applicable.

5. The payment of insurance premiums after the enactment of the law placed a new burden upon the old stockholders thereby reducing the value of their shares. (Part of the earnings of the bank were used to pay the premiums for the said insurance.)

6. The statute, 12 U. S. C. A., 64 (a), was remedial in nature and as no vested rights existed at the time against stockholders, there was no reason to invoke the penal provisions of the old statutory provisions (*Chase Securities Corp.* v. *Donaldson*, U. S. Sup. Ct., May 21, 1945).

7. The failure of Congress to delimit the operation of 12 U. S. C. A., 64 (a) by adding to the plain and unambiguous language a clause making an exception.

8. The provisions of the later statute of August 23, 1935 are not available to respondent to interpret the statute ex-

empting from additional liability passed on June 16, 1933 which also provided for insurance of bank deposits, since the statute of June 16, 1933 is clear and unambiguous. The statute of August 23, 1935 applies to shares which have not gone through the wringer of reorganizations.

9. The respondent continues to insist that only certificates owned by the petitioners were cancelled and not the stock itself. The record, however, will show that the stock itself was surrendered and cancelled and that of necessity the certificates, as evidence of such stock, were required to be surrendered and marked cancelled.

CONCLUSION.

Petitioners believe that the respondent's brief begs the question and does not successfully answer the only question which is now before the Court, namely, whether a writ of certiorari should issue to a State Court on a Federal matter in the important questions involved in this litigation.

Dated: New York, September 27, 1945.

Respectfully submitted,

JAMES H. HICKEY,
Attorney for Petitioners.